

Vox Populi, Fax Populi.

[2.]

OR, A

Discovery of an Impudent

C H E A T

A N D

F O R G E R Y

Put upon the People of *ENGLAND* by *ELEPHANT SMITH*, and his Author
of *VOX POPULI*.

Thereby Endeavoring to instill the Poysonous Principles of
Rebellion into the Minds of His Majesties Subjects.

Humbly Recommended to all Loyal Subjects
and True Englishmen.

*Nemo quidem de factis suis presumat disputare, multo fortius contra factum
suum venire.* Bracton, Lib. 1. c. 8 nu. 5. *De Dignitate Regis.*

In *Solomons* English;

*My Son fear thou God, and the King, and meddle not with them, that
are given to Change; for their Calamity shall arise suddenly, and who
knoweth the Ruin of them both? Prov. 24. v. 21, 22.*

LONDON, Printed by *S. R.* for *Benj. Tooke*, at the
Ship in *St. Paul's Church-yard.* 1681.

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Vox Populi, Fax Populi :

O R ,

A Discovery of an Impudent Cheat and Forgery put upon the People of England by Elephant Smith and his Author of Vox Populi, &c.



Here is nothing more self-evident, and apparent, than that the poysonous Dregs and Lees of the late horrid and unnatural Rebellion begin again to rise, and put the Nation into a Ferment, and yet men must not be allowed to speak, but presently their Mouths must be stopt with the Reproach of *Tories*, if they be Laymen, and *Tantivies*, if they be Ecclesiasticks ; And Fourty One, and Fourty Eight must by no means be named, for fear of disuniting Protestants.

I cannot tell what Union they mean, but if this Paper be the true Sence of the dissenting Protestants, they seem but too closely united already against the Government, and with their predecessors, who *actually levell'd the Church, and State with the Ground*, and by the same Principles, and pretences of *this Paper*, which is but the Commonwealth of *England* drawn in Miniature by a Cunning Hand, and his

Vox Populi an Eccho of the last Barbarous Civil War.

But that which was most surprizing, was, to see it Fronted with an *Humbly recommended to the King and Parliament at their Meeting at Oxford the 21. of March*, though I doubt not to make him, I cannot hope to blush, but ashamed of his Present, before we part, unless he be of the Metal of that Sinner of David's Psal. 50. v. 19, 20, 21. *Thou givest thy Mouth to evil, and thy Tongue frameth Deceit. Thou sittest, and speakest against thy Brother, thou slanderest thine own Mothers Son. These things hast thou done, and I kept silence, and thou thoughtest I was altogether such a one as thy self.* And then comes in a Scrap of *Bracton*, which has been boyled into Crambe in the Pipkin of the Commonwealth, with the Sons of the Prophets Death in the Pot, and yet is but a piece of *Justinian* quoted by *Bracton* to serve another purpose, than our Scribler intends, as he knows it, if he knows any thing besides the Art beyond that of Madam *Brinvillers*, of poysoning Mens Souls as well as Bodies. But why he should bring in the Scripture of removing the *Land-Mark* I cannot imagin, unless to wrest it to his own damnation, as the Unstable do, since nothing is more evident than that the Principles of his Book did not only remove the ancient *Bounds*, and *Land-Marks*, but the true Possessors of the Lands, a far greater Sin sure, and slew the Heir, that they might possess the Inheritance.

He begins with the Popish Plot, which is the only popular, and taking prologue; but yet by his favour, he does not seem to believe it all, or if he does, he seems to be an Actor, if not a Contriver in it; for the Original Narrative acquaints us, pag. 64. That the Royal Family

Family of the *Stuarts* are condemned to be cut off, Root and Branch, and namely the *King*, the *Duke of York*, and the Prince of *Orange*; and this was to be effected, by disaffecting the Kings best Friends, and Subjects against his Person and Government, charging him with Tyranny, and Designs of Oppression, Governing by the Sword, and without Parliaments: And this was to be done by false Intelligencers, and Seditious Preachers in private or publick Conventicles; Look here the *Author*, and the *Publisher*. For compare *Vox Populi*, and *Frank Smith* the Anabaptist Preacher in *Vox Populi*, pag. 1. And you shall see, they are a perfect *Tally*, and notch exactly; For, says he, so prevalent has this Interest been under so potent a Head as the *D. of T.* as to stifle in the Birth all those hopeful Parliament Endeavours by those many surprising, and astonishing Prorogations, and Dissolutions which they have procured. This was not at all designed to reflect upon his Majesty, to disaffect the Subjects, I warrant you, no, not for the World, Mr. *Vox Populi* had never such a thought, Good Man.

I know some persons will presently stumble at the Threshold, and cry out, A *Papist*, a *Torkist*, according to the breeding and manners of the Time; as if a man could not honor the Duke as Son of the Martyr, and Brother to our Gracious Sovereign, and yet hate Popery, with more ease than the old Commonwealths Men divided the Person from the King. To these I have only this to say, I would desire them seriously to consider, how far the Intention of some People may carry on the Design of Rooting out the Family of the *Stuarts* sworn to be Part of the Popish Plot, the *Duke* being one Branch of the Family, and as the matter has been managed by the Intelligencers of the Nation, all
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the Lords Spiritual, the greatest part of the Lords Temporal, All the Churchmen, and Loyal Gentry are declared Adherents to the Duke, and if it were time of day to speak English, you should have *Vox Populi* go to the end ont. Now the Duke cannot be laid aside, but his Adherents must be so too, and then the Management of all must come to the hands of those Loyal Dissenters, who about 50000 strong attended the King at *Worcester*, which was a very Extraordinary Guard.

I have no design to multiply words to no purpose, and therefore will not quarrel with every thing he says, though I confess he has so mingled Poyson and Antidote, Truth and Malice, Falshood and Artifice, that there is scarce a Line in his two Sheets that is not lyable to Exception.

I own the Excellent Constitution of an English Parliament, and honour it with all the becoming Veneration of a Subject born in *England*, a Lover of Liberty, a sincere Protestant according to the Excellent Doctrine of the Church of *England*, as now it stands, and one that hopes to enjoy the Advantages of the well tempered Government here, and the Happiness promised by the Reformed Religion hereafter; but I hate, and abhor all Usurpations, and more especially those of the Late Commonwealth Rebels, which I find summed up by Mr. *Vox Populi* under these Heads:

1. That the Law makes the King. *Title Page.*
2. That the King is only a King, while he rules well, but a Tyrant, when he oppresses. *Pag. 2.*
3. Especially when it comes in with an *Innuendo*, that his Majesty has not ruled well in those many surprizing and astonishing Prorogations and Dissolutions, and when it is positively affirmed, That not to suffer

suffer Parliaments to sit to answer the great ends for which they were Instituted, is expressly contrary to Common Law, and to the Law of God, of Nature, and a violence offered to the Government, an Infringment of the Peoples fundamental Rights, and tends to the breaking of the Government, and introducing Arbitrary Power. *p. 5, 6.*

4. That the King and his Predecessors Power of Proroguing, and Dissolving Parliaments, is only an Argument *a facto ad Jus*, and not concluding their having done so, or doing so doth not create a Right, which is in plain English to say, This Prerogative is an Usurpation, and by clear Consequence strikes directly at the King, as an oppressor, which before he has told us, does Unking him, and make him a Tyrant. *pag. 13.*

5. That according to *Magna Charta*; *Nulli negabimus*, the King ought to have no Negative Voice, or to deny passing such Bills as the Peoples needs call for.

This is a short Abstract of this *Vox Populi*; But can you imagin, whence this Godly Piece was borrowed to be presented to the King and Parliament for a New Mirror of Justice, and Model of Government? from a very Celebrated Authority, I assure you, no worse Man than the English *Pilate*, the scarlet villain *Bradshaw's* Reports, *Charles* the First his Case, and Mr. Solicitor *Cooke*, who was hang'd, drawn, and quarter'd for his pains, as his Master would have been, if the Devil had not saved the Hangman the Labour.

The Charge of the Commons of England against Charles Stuart, &c. There's his Title, *Vox Populi*.

That the said Charles Stuart being admitted King of England (there's his first Maxim that the Law makes the King) and therein trusted with a limited Power,

Power, and by his Trust, Oath, and Office, being oblig'd to use the Power committed to him for the Good of the People, and for Preservation of their Rights and Liberties: yet nevertheless out of a wicked Design, to erect, and uphold in himself an unlimited, and Tyrannycal Power to rule according to his Will, and to overthrow the Rights, and Liberties of the People, yea to take away, and make void the Foundations thereof, and of all Redress and Remedy of Misgovernment, which by the Fundamental Constitutions of this Kingdom were reserved on the Peoples behalf in the Rights and Power of frequent, and successive Parliaments, or National Meeting; He the said Charles Stuart, &c. Here is the sum and substance of *Vox Populi*, which I leave to the Reader to compare, to save him the expence of Money, and my self of time. And is not this a very pretty Looking Glas to present to a King and Parliament at Oxford, wherein the King is arraign'd of Misgoverning, Proroguing, Dissolving, &c. as indeed his two Sheets are nothing else but this *Compendium* beaten a little Thinner.

But that I may give some account to the People whom this Mr. *Vox* will needs represent, though he was never chosen by them, and they have other Representatives at *Oxon*, who will not be pleased with his Usurpation upon their Rights and Priviledges. In Answer to his First Thesis, *That the Law makes the King*. First, It is contrary to expresse Scripture, *By me Kings reign*, & the Powers that be are ordain'd of God.

2. It is against the Law of Reason, and Nature, *Causa est prior Causato*, the Cause must be before the Effect, and by consequence the Kings, who are Law-Makers, before the Laws.

3. It is against the Civil Law, as it were easie to instance

instance in a thousand places. Take one or two that are at hand; *Sacrilegiis instar est Rescripta Principis obviare. Unde ipse Legibus Civilibus non astringitur, nam in omnibus Imperatoris excipitur Fortuna, cui ipsas Leges Deus subiecit.* Zouch. Pars 4. Sect. 4. *De Jure Principis.* It is a kind of Sacrilege, says he, to disobey the Commands of the Prince, though he himself is not confined by the Laws; for in all things the Prerogative Royal is excepted to him to whom God hath subjected the Laws.

Licet legibus soluti simus, attamen Legibus vivimus. Just. 2. 17. a. Though the Emperor be free, yet he lives according to Laws. And as his Most Excellent Majesty in his late Speech to the Parliament at Oxon, assures his People in these words, *I conclude with this one Advice to you, That the Rules and Measures of all your Votes may be the known and established Laws of the Land, which neither can nor ought to be departed from nor changed but by Act of Parliament; and I may the more reasonably require that you make the Laws of the Land Your Rule, because I am resolved they shall be Mine.* A Resolution worthy so Great and Good a Prince, and which will sure be satisfactory to all Loyal Subjects, and is alone an Answer to Mr. *Vox Populi*. And to convince Mr. *Vox Populi* with an Argument *ad Hominem*, If the King be not above the Laws, which he cannot be, if he be their Creature, what will become of him for a Pardon, which if he, and his friends do not procure, indeed Mr. *Vox Populi* is in danger of having his Singing spoiled by the Laws for being guilty of *Colemanism*, and turning Secretary of State before his time: The *Crimen Læse Majestatis*, which I think, if the King will not, the Law cannot pardon.

To his great Authority of *Bracton*, I oppose the no

Learned and Famous Sir *Walter Raleigh*, whose words; a Commentary upon *Bracton*, are these: *Whereas there are two Powers of the Law, the one Directive, the other Coactive; to the Power Directive Kings ought to be subject, but not to that which Constrains: For as touching Violence or Punishment, no man is bound to give a prejudicial Judgement against himself: And if Equals have not Power over each other, much less have Inferiours over their Superiours from whom they receive their Authority and Strength.*

The Prince, adds he, is so much above the Laws, as the Soul, and Body united is above a dead, and senseless Carcase; for the King is truly called *Jus vivum & Lex animata*, an animate, and living Law. But this is true, that by giving Authority to Laws, Princes both add greatness to themselves and conserve it, and therefore was it said of *Bracton*, *Merito debet Rex, &c.* But whereas *Bracton* ascribeth this Power to the Human Law, he is therein mistaken; for Kings are made by God and Laws Divine, and by Human Laws only declared to be Kings: *Raleighs Hist. Lib. 2. part. 1. c. 4. num. 16.*

And in another place *Bracton* explains himself, and puts the Case; If the King should do injury, what is to be done; and tells us, If upon humble petitioning he cannot be brought to alter his mind, he is to be left to God almighty, *Cum Superiorem non habeat, nisi Deum, &c.* Having no other Superior, but God. *Lib. 5. Tract. 3. de defaultis. c. 3. num. 3.*

And for a more ample satisfaction I refer the Reader to Mr. *Dudley Diggs* his Discourse concerning the Unlawfulness of Subjects taking up Arms against their Sovereign, in what Case soever; where he shall find this point sufficiently winnowed, and the Chaff of this

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Commonwealth-Maxim blown away by the strength of Law, Reason, and Religion. pag. 77, 78, &c.

To his Second Aphorism, *Rex a bene Regendo*: That he is only King while he rules well, but a Tyrant when he oppresses. If he meanes that he ceases to be a King, and by consequence his Subjects are free from their Allegiance, which is a Doctrine strenuously maintained by Papists and Commonwealth-Protestants, I say, it is utterly false, and I oppose to it. First, his own allowed Maxim of our Law, *Rex non moritur*, &c. The King cannot dye or do wrong.

2. It is contrary to Scripture: God Almighty, who must not be said to speak improperly, calls *Pharaoh, Saul, Agag, Nebuchadnezzar Kings*, nay, and which is more, commands Obedience to them. And if Mr. *Vox* will be wiser than the Maker of Kings, I think he is fitter for *Bedlam* and *Hellebore* himself, than to prescribe to a King, and Parliament, as State Physician in ordinary to them both.

To his Third, which is a charge of Misgoverning, silyly thrown upon his Majesty: I shall refer him to the *Attorney General*, who I presume at leisure may answer him more appositely, and to the purpose, if he be not *Vox & prater ea nihil*: Only I must say, It is the most false, and groundless, malicious, and impudent Calumny thrown upon a just, good, and merciful Prince that ever was since the times of *Pilate*, and *Bradshaw*, and a very ill Requital for the Act of Oblivion, and the last Free and General Pardon, of which by his Speech I cannot but suspect this *Galilean* to have had some benefit: The comfort is, his Majesty cannot, after all this Noyse, be taxed with so much as one Arbitrary Action, nor of having ever denied his People any one thing requested of him in a fair and Parliamentary way.

His fourth Thesis puts me in mind of the poor Country Fellow's Mistake, who read, The Devil was a Lawyer from the beginning; Just such another *Huntsman* of Law is our Little *Vox Populi*, who says, The Kings Prerogative of Calling, Adjourning, and Proroguing of Parliaments, is arguing a *Facto ad Jus*, and that their doing so, does not create a Right.

Say you so good Mr. *Vox Populi*! What think you to Prescription of above a Thousand years, which I am sure is time beyond which the Memory of Man cannot prove to the contrary. Is it no Argument that because the River *Thames* always ran from *Oxon* to *London*, that therefore that is its proper Channel, but that it ought to run over *Black-Heath*, or *Highbate-Hill*? For shame! If you had the quiet Prescription of Possession for a good Estate of 40 s. *per Annum* to make you a Freeholder, would you not take it ill to be shoulder'd out of your Tenement with a *non sequitur* of forcible Entry drawn a *facto ad Jus*; And must the Crown hold by Copy of Court-Roll at the will of the Little Lord Mr. *Vox Populi*?

But Secondly: Pray what was the meaning of the Parliament of Nov. 3. 1640. to get an Act to perpetuate their Sitting, during the Pleasure of the two Houses, though it may be his Majesty had with more Advantage advised upon it, and (as they would have the Judges Parents) to have inserted a Clause into it, *Quandiu se bene gesserint*; for Parliaments are but Men, and no more infallible than Popes.

3. What is the meaning of that Act of Parliament, 16 Car. 1. c. 1. It is declared, That the Appointment of the Time and Place for the holding of Parliaments, hath always belonged, as it ought, to his Majesty and his Royal Progenitors? Or of that Aphorism, *Cujus est*

institueret,

instituere, ejus est destituere, He that hath the Power to make, hath the Power to unmake? Will you force us to that of the Poet for an Oracle?

*Aetas parentum pejor Avīs
Nos tandem protulit progeniem
vitiōsiorem.*

Must we grow every Age worse than others? this is a sad Doctrine to be heard from a Reforming *Vox Populi*.

What means that Statute 16 Car. 2. c. 1. It is acknowledged, That it is a Prerogative Inherent to the Imperial Crown of *England*, the Calling and Assembling of Parliaments, &c. Good Mr. *Vox*, is this too, Arguing *a facto ad Jus*, or *a Jure ad factum*? What a Dolt was the Reputed Oracle of the Law to tell us; *None can begin, continue, or dissolve the Parliament but by the Kings Authority*, Co. Litt. fol. 110. a. And in another place to argue so simply *a facto ad Jus*, when he tells us, *The King is Caput, Principium & Finis Parliamenti*; The Head, the Beginning, and End of Parliaments, Co. 4. Inst. f. 3. How happy are some Persons in their Illuminations, and their Discoveries!

His Fifth Position, That according to *Magna Charta* the King ought to have no Negative Voice, is like the rest of his Reasonings, and agreeable to his Principles, who would have the King have nothing at all. Good Mr. *Vox*, as you are Valiant, so be Merciful: What must the King be subject to the Laws, and yet have no power at all to refuse any? Pray Mr. *Eccho* of the Late Rump, do as you would be done by. Must the Commons have a Negative Vote, and the Lords have a Negative, *Non Consent*, and the Sovereign be Content with what

what ever is afforded him? Pray, Sir, how much younger do you think is *Le Roy S'avifera*, than *Le Roy Le veult*? Here's a pudder and a flir about denying and denying Bills, and yet Queen *Elizabeth*, in a Parliament in the 39th. year of her Reign rejected but 48. Bills which had passed both Houses, and sent the Speaker of the Commons word, That it was her Majesties Pleasure, that if he perceived any idle Heads that would not stick to hazard their own Estates, but meddle with Reforming the Church, and Transforming the Common Weal by exhibiting Bills to that purpose, the Speaker should not receive them, till they were view'd and consider'd by those who are fitter to consider and judge of them.

And yet then Mr. *Vox Populi* made no words about the matter: And if he had recommended his Story to that Queen and her Parliament, he would have been recommended to some Ballad Singer, to compose a Doleful Ditty, upon the woful Life, and deserved Death of *Vox Populi*, for Conspiring against our Gracious Queen *Elizabeth*. And there is a positive Statute, affirming the Kings having a Negative Voice, 2 *H. 5. Rot. Parl.* At the same Rate and Ingenuity he reasons about the King's having no Prerogative, but what the Law allows him, when nothing is more frequent than *Salvo's* of the Royal Prerogative, which sure supposes the King had some such thing, which the Laws did not give, nor should take away. Artic. *super chartas*, Cap. 2. And what is the meaning of these words so frequent in our Law-Books, *Salvo Jure Regio*? Pray Mr. *Vox* inform the King and Parliament.

And for his Story of the Honest Proclamation, that no Parliament should be Dissolved so long as any Petitions

Vide 3. E. 1. c. 5.
8. E. 1. c. 2. 28. E.
1. c. 20. 18. E. 3. c.
1. 34. E. 3. c. 15.

tions were not answered, he should have acquainted the People, that at the Opening of the Parliament such a Number of Lords, and Commons were appointed Tryers of Petitions, which were to be brought to them, and they were the Judges, which were fit to be preferred to the King, and which to be rejected; And it would little avail his Design of protracting of Sessions, since as it would be unreasonable, so Honourable an Assembly as the Parliament should sit waiting for Petitions, so most certainly a Day would be appointed for the People to bring them in; and if they came not, the Parliament would not be obliged to attend longer, having dispatched the more weighty Affairs.

I do not know, who this *Anonymus* Author is, but it may be himself; or at best, it is but asking his Companion whether he be a Thief, and calling his Accomplice to be his Voucher, and Compurgator, and that does not add much weight to his Arguments or strength to his Cause.

In short, the Pamphlet is the *Compendium* of the Assertions, and Positions of the Long Rebel Parliament; the *Epitome* of *Bradshaw*, and *Cooke*; an Affront to his Majesty, and the Parliament; a Firebrand of Sedition; a Trumpet to Rebellion; and a most shameful Abuse of the People, of whom he has made himself the Representative: It begins with the Plot, and for any thing I see, may end with the Doom of the Plotters; and to the Law and his Deserts, I leave him: Wishing a Happy Union between the King and his Parliament, and that they may be delivered from the Presents of such *Vox Populi's*, as are designed to pull us all in Flames.

F I N I S.